

INTRODUCED BY COMMITTEE ON JUDICIARY AND JUDICIAL DEPARTMENT.

NOVEMBER 13TH, 1878.

*A. O. Amended in Committee of the Whole*  
~~READ, ORDERED TO LIE ON TABLE, AND NINE HUNDRED AND SIXTY COPIES~~  
~~PRINTED.~~

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the  
2 Senate sitting as a Court of Impeachment, in a Supreme Court, Superior  
3 Courts, Justices of the Peace, and such inferior Courts as the Legislature  
4 may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six  
2 Associate Justices. The Court may sit in departments and in bank, and shall  
3 always be open for the transaction of business. There shall be two depart-  
4 ments, denominated, respectively, Department One and Department Two.  
5 The Chief Justice shall assign three of the Associate Justices to each depart-  
6 ment, and such assignment may be changed by him from time to time. The

7 Associate Justices shall be competent to sit in either department, and may  
8 interchange with each other by agreement among themselves or as ordered  
9 by the Chief Justice. Each of the departments shall have the power to hear  
10 and determine causes and all questions arising therein, subject to the provis-  
11 ions hereinafter contained in relation to the Court in bank. The presence of  
12 three Justices shall be necessary to transact any business in either of the  
13 departments, except such as may be done at Chambers, and the concurrence  
14 of three Justices shall be necessary to pronounce a judgment. The Chief  
15 Justice shall apportion the business to the departments, and may, in his dis-  
16 cretion, order any cause pending before the Court to be heard and decided  
17 by the Court in bank. The order may be made before or after judgment  
18 pronounced by a department; but where a cause has been allotted to one of  
19 the departments, and a judgment pronounced thereon, the order must be made  
20 within thirty days after such judgment, and concurred in by two Associate  
21 Justices, and if so made it shall have the effect to vacate and set aside the  
22 judgment. If the order be not made within the time above limited, the judg-  
23 ment shall be final. No judgment by a department shall become final until  
24 the expiration of the period of thirty days aforesaid, unless approved by the  
25 Chief Justice, in writing, with the concurrence of two Associate Justices.  
26 The Chief Justice may convene the Court in bank at any time, and shall be  
27 the presiding Justice of the Court when so convened. The concurrence of  
28 four Justices present at the argument shall be necessary to pronounce a judg-  
29 ment in bank; but if four Justices, so present, do not concur in a judgment,  
30 then all the Justices qualified to sit in the cause shall hear the argument; but  
31 to render a judgment a concurrence of four Judges shall be necessary. In  
32 the determination of causes, all decisions of the Court in bank or in depart-  
33 ments shall be given in writing, and the grounds of the decision shall be  
34 stated. The Chief Justice may sit in either department, and shall preside

35. when so sitting, but the Justices assigned to each department shall select one  
 36. of their number as presiding Justice. All sessions of the Court, whether in  
 37. bank or in departments, shall be held at the Capital of the State. In case of  
 38. the absence of the Chief Justice from the place at which the Court is held, or  
 39. his inability to act, the Associate Justices shall select one of their own num-  
 40. ber to perform the duties and exercise the powers of the Chief Justice during  
 41. such absence or inability to act.

*The following is Sec 2 as  
 amended on motion of Mr  
 Waters and adopted*

SEC. 2. The Supreme Court shall consist of a Chief Justice and six  
 2 Associate Justices. The Court may sit in departments and in bank, and shall  
 3 always be open for the transaction of business. There shall be two depart-  
 4 ments, denominated, respectively, Department One and Department Two.  
 5 The Chief Justice shall assign three of the Associate Justices to each depart-  
 6 ment, and such assignment may be changed by him from time to time. The  
 7 Associate Justices shall be competent to sit in either department, and may  
 8 interchange with each other by agreement among themselves or as ordered  
 9 by the Chief Justice. Each of the departments shall have the power to hear  
 10 and determine causes and all questions arising therein, subject to the provis-  
 11 ions hereinafter contained in relation to the Court in bank. The presence of  
 12 three Justices shall be necessary to transact any business in either of the  
 13 departments, except such as may be done at Chambers, and the concurrence  
 14 of three Justices shall be necessary to pronounce a judgment. The Chief  
 15 Justice shall apportion the business to the departments, and may, in his dis-  
 16 cretion, order any cause pending before the Court to be heard and decided  
 17 by the Court in bank. The order may be made before or after judgment  
 18 pronounced by a department; but where a cause has been allotted to one of  
 19 the departments, and a judgment pronounced thereon, the order must be made  
 20 within thirty days after such judgment, and concurred in by two Associate  
 21 Justices, and if so made it shall have the effect to vacate and set aside the

22 judgment. If the order be not made within the time above limited, the judg-  
23 ment shall be final. No judgment by a department shall become final until  
24 the expiration of the period of thirty days aforesaid, unless approved by the  
25 Chief Justice, in writing, with the concurrence of two Associate Justices.  
26 The Chief Justice may convene the Court in bank at any time, and shall be  
27 the presiding Justice of the Court when so convened. The concurrence of  
28 four Justices present at the argument shall be necessary to pronounce a judg-  
29 ment in bank ; but if four Justices, so present, do not concur in a judgment,  
30 then all the Justices qualified to sit in the cause shall hear the argument ; but  
31 to render a judgment a concurrence of four Judges shall be necessary. In  
32 the determination of causes, all decisions of the Court in bank or in depart-  
33 ments shall be given in writing, and the grounds of the decision shall be  
34 stated. The Chief Justice may sit in either department, and shall preside

35 when so sitting, but the Justices assigned to each department shall select one  
36 of their number as presiding Justice. ~~All sessions of the Court, whether in~~  
37 ~~bank or in departments, shall be held at the Capital of the State.~~ In case of  
38 the absence of the Chief Justice from the place at which the Court is held, or  
39 his inability to act, the Associate Justices shall select one of their own num-  
40 ber to perform the duties and exercise the powers of the Chief Justice during  
41 such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected  
2 by the qualified electors of the State at large, at the general State elections,  
3 at the times and places that State officers are elected ; and the term of office  
4 shall be twelve years, from and after the first Monday of January next suc-  
5 ceeding their election ; *provided*, that the six Associate Justices elected at the  
6 first election shall, at their first meeting, so classify themselves, by lot, that  
7 two of them shall go out of office at the end of four years, two of them at  
8 the end of eight years, and two of them at the end of twelve years, and an  
9 entry of such classification shall be made in the minutes of the Court in  
10 bank, signed by them, and a duplicate thereof shall be filed in the office of  
11 the Secretary of State. If a vacancy occur in the office of a Justice, the  
12 Governor shall appoint a person to hold the office until the election and  
13 qualification of a Justice to fill the vacancy, which election shall take place

14 at the next succeeding general election, and the Justice so elected shall hold  
15 the office for the remainder of the unexpired term. The first election of the  
16 Justices shall be at the first general election after the adoption and ratifica-  
17 tion of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all  
2 cases in equity; also in all cases at law which involve the title or possession  
3 of real estate, or the legality of any tax, impost, assessment, toll, or munici-  
4 pal fine, or in which the demand, exclusive of interest, or the value of the  
5 property in controversy, amounts to three hundred dollars; also in cases of  
6 forcible entry and detainer, and in all such probate matters as may be pro-  
7 vided by law; also in all criminal cases amounting to felony on questions of  
8 law alone. The Court shall also have power to issue writs of mandamus, cer-  
9 tiorari, prohibition, and habeas corpus, and also all writs necessary or proper  
10 to the complete exercise of its appellate jurisdiction. Each of the Justices  
11 shall have power to issue writs of habeas corpus to any part of the State,  
12 upon petition by or on behalf of any person held in actual custody, and may

13 make such writs returnable before himself, or the Supreme Court, or before  
14 any Superior Court in the State; or before any Judge thereof.

*The following is Sec 4 as amended on motion of Mr. Jerry*  
*and adopted*

SEC. 4. The Supreme Court shall have appellate jurisdiction in all  
2 cases in equity; also in all cases at law which involve the title or possession  
3 of real estate, or the legality of any tax, impost, assessment, toll, or munici-  
4 pal fine, or in which the demand, exclusive of interest, or the value of the  
5 property in controversy, amounts to three hundred dollars; also in cases of  
6 forcible entry and detainer, and in all such probate matters as may be pro-  
7 vided by law; also in all criminal cases

*Prosecuted by indictment,*  
*or information in a Court of Record* on questions of

8 law alone. The Court shall also have power to issue writs of mandamus, cer-  
9 tiorari, prohibition, and habeas corpus, and also all writs necessary or proper  
10 to the complete exercise of its appellate jurisdiction. Each of the Justices  
11 shall have power to issue writs of habeas corpus to any part of the State,  
12 upon petition by or on behalf of any person held in actual custody, and may

- 6
- 13 make such writs returnable before himself, or the Supreme Court, or before  
14 any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Courts shall have original jurisdiction in all  
2 cases in equity, and in all cases at law which involve the title or possession  
3 of real property; or the legality of any tax, impost, assessment, toll, or municipal  
4 fine, and in all other cases in which the demand, exclusive of interest or the  
5 value of the property in controversy, amounts to three hundred dollars, and  
6 in all criminal cases amounting to felony, and cases of misdemeanor not oth-  
7 erwise provided for; also, in actions of forcible entry and detainer, of pro-  
8 ceedings in insolvency, of actions to prevent or abate a nuisance; also, of all  
9 matters of probate, and, also, of divorce and for annulment of marriage, and  
10 all such special cases and proceedings as are not otherwise provided for. And  
11 said Courts shall have the power of naturalization, and to issue papers there-  
12 for. They shall have appellate jurisdiction in such cases arising in Justices'  
13 and other inferior Courts in their respective counties as may be prescribed by  
14 law. Said Courts shall be always open (legal holidays and non-judicial days  
15 excepted), and their original jurisdiction shall extend to all parts of the State.  
16 Said Courts, and their Judges, shall have power to issue writs of mandamus,

17 certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on  
18 behalf of any person in actual custody, in their respective counties.

*The following is Sec 5 as amended  
on motion of ~~Mr. Wilson~~ of 1st dist  
and Mr. Wilson & Freeman*

SEC. 5. The Superior Courts shall have original jurisdiction in all  
2 cases in equity, and in all cases at law which involve the title or possession  
3 of real property, or the legality of any tax, impost, assessment, toll, or municipal  
4 fine, and in all other cases in which the demand, exclusive of interest or the  
5 value of the property in controversy, amounts to three hundred dollars, and  
6 in all criminal cases amounting to felony, and cases of misdemeanor not oth-  
7 erwise provided for; also, in actions of forcible entry and detainer, of pro-  
8 ceedings in insolvency, of actions to prevent or abate a nuisance; also, of all  
9 matters of probate, and, also, of divorce and for annulment of marriage, and

10 all such special cases and proceedings as are not otherwise provided for. And  
11 said Courts shall have the power of naturalization, and to issue papers there-  
12 for. They shall have appellate jurisdiction in such cases arising in Justices'  
13 and other inferior Courts in their respective counties as may be prescribed by  
14 law. Said Courts shall be always open (legal holidays and non-judicial days  
15 excepted), and their ~~original jurisdiction~~ <sup>Process</sup> shall extend to all parts of the State.  
16 Said Courts, and their Judges, shall have power to issue writs of mandamus,

17 certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on  
18 behalf of any person in actual custody, in their respective counties, <sup>Injunctions,</sup>

*and writs of prohibition may be used  
and served on legal holidays and  
non judicial days.*

SEC. 6. There shall be in each of the organized counties, or cities and  
2 counties, of the State, a Superior Court, for each of which at least one Judge  
3 shall be elected by the qualified electors of the county, or city and county, at  
4 the general State election; *provided*, that in the City and County of San Fran-  
5 cisco there shall be elected twelve Judges of the Superior Court, any one or  
6 more of whom may hold Court. There may be as many sessions of said  
7 Court, at the same time, as there are Judges thereof. The said Judges shall  
8 choose from their own number a presiding Judge, who may be removed at  
9 their pleasure. He shall distribute the business of the Court among the  
10 Judges thereof, and prescribe the order of business. The judgments, orders,  
11 and proceedings of any session of the Superior Court, held by any one or  
12 more of the Judges of said Courts, respectively, shall be equally effectual as  
13 if all the Judges of said respective Courts presided at such session. In each  
14 of the Counties of Sacramento, Los Angeles, and Alameda, there shall be  
15 elected two such Judges. The term of office of Judges of the Superior Courts

16 shall be six years, from and after the first Monday of January next succeed-  
17 ing their election; *provided*, that the twelve Judges of the Superior Court,  
18 elected in the City and County of San Francisco at the first election held  
19 under this Constitution, shall, at their first meeting, so classify themselves, by



8  
20 lot, that four of them shall go out of office at the end of two years, and four  
21 of them shall go out of office at the end of four years, and four of them shall  
22 go out of office at the end of six years, and an entry of such classification  
23 shall be made in the minutes of the Court, signed by them, and a duplicate  
24 thereof filed in the office of the Secretary of State. The first election of  
25 Judges of the Superior Courts shall take place at the first general election  
26 held after the adoption and ratification of this Constitution. If a vacancy  
27 occur in the office of Judge of a Superior Court, the Governor shall appoint a  
28 person to hold the office until the election and qualification of a Judge to fill  
29 the vacancy, which election shall take place at the next succeeding general  
30 election, and the Judge so elected shall hold office for the remainder of the  
31 unexpired term.

*Revenue*

*The following is Sec 6 as amended  
on motion of Messrs Belcher, Curtin, &  
Overton, and adopted.*

SEC. 6: There shall be in each of the organized counties, or cities and  
2 counties, of the State, a Superior Court, for each of which at least one Judge  
3 shall be elected by the qualified electors of the county, or city and county, at  
4 the general State election;

*Provided, that until otherwise  
ordered by the Legislature, only  
one Judge shall be elected for  
the Counties of Yuba and  
Sutter and one for the Counties  
of El Dorado & Alpine and,  
provided, that in the City and County of San Fran-*

5 cisco there shall be elected twelve Judges of the Superior Court, any one or  
6 more of whom may hold Court. There may be as many sessions of said  
7 Court, at the same time, as there are Judges thereof. The said Judges shall  
8 choose from their own number a presiding Judge, who may be removed at  
9 their pleasure. He shall distribute the business of the Court among the



9  
10 Judges thereof, and prescribe the order of business. The judgments, orders,  
11 and proceedings of any session of the Superior Court, held by any one or  
12 more of the Judges of said Courts, respectively, shall be equally effectual as  
13 if all the Judges of said respective Courts presided at such session. In each  
14 of the Counties of Sacramento, Los Angeles, ~~Sonoma~~ and Alameda, there shall be  
15 elected two such Judges. The term of office of Judges of the Superior Courts

Heck  
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is Sonoma

16 shall be six years, from and after the first Monday of January next, Succeed-  
17 ing their election; *provided*, that the twelve Judges of the Superior Court,  
18 elected in the City and County of San Francisco at the first election held  
19 under this Constitution, shall, at their first meeting, so classify themselves, by  
20 lot, that four of them shall go out of office at the end of two years, and four  
21 of them shall go out of office at the end of four years, and four of them shall  
22 go out of office at the end of six years, and an entry of such classification  
23 shall be made in the minutes of the Court, signed by them, and a duplicate  
24 thereof filed in the office of the Secretary of State. The first election of  
25 Judges of the Superior Courts shall take place at the first general election  
26 held after the adoption and ratification of this Constitution. If a vacancy  
27 occur in the office of Judge of a Superior Court, the Governor shall appoint a  
28 person to hold the office until the election and qualification of a Judge to fill  
29 the vacancy, which election shall take place at the next succeeding general  
30 election, and the Judge so elected shall hold office for the remainder of the  
31 unexpired term.

SEC. 7. In any county, or city and county, other than the City and  
2 County of San Francisco, in which there shall be more than one Judge of  
3 the Superior Court, the Judges of such Court may hold as many sessions of  
4 said Court at the same time as there are Judges thereof, and shall apportion  
5 the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court  
2 in any county, at the request of a Judge of the Superior Court thereof, and  
3 upon the request of the Governor it shall be his duty so to do.

The following is Sec 8 - as amended  
on motion of Mr Barry and adopted

SEC. 8. A Judge of any Superior Court may hold a Superior Court  
2 in any county, at the request of a Judge of the Superior Court thereof, and  
3 upon the request of the Governor it shall be his duty so to do.

*But a cause in a Superior Court  
may be tried by a Judge - pro-tem  
who must be a member of the bar agreed  
upon in writing by the parties  
litigant, or their attorneys of record,  
approved by the Court and sworn  
to try the cause.*

SEC. 9. The Legislature shall have no power to grant leave of absence  
2 to any judicial officer; and any such officer who shall absent himself from  
3 the State for more than sixty consecutive days shall be deemed to have for-  
4 feited his office. The Legislature of the State may at any time, two-thirds of  
5 the members of the Senate and two-thirds of the members of the Assembly  
6 voting therefor, increase or diminish the number of Judges of the Superior  
7 Court in any county, or city and county, in the State; *provided*, that no such  
8 reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior  
2 Courts, may be removed by concurrent resolution of both Houses of the  
3 Legislature, adopted by a two-third vote of each House. All other judicial  
4 officers, except Justices of the Peace, may be removed by the Senate on the  
5 recommendation of the Governor, but no removal shall be made by virtue of  
6 this section, unless the cause thereof be entered on the Journal, or unless the  
7 party complained of has been served with a copy of the complaint against  
8 him, and shall have had an opportunity of being heard in his defense. On  
9 the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. There shall be one Justice of the Peace elected in each town-  
ship in the State, and the Legislature shall determine the number of Justices  
of the Peace to be elected in each incorporated city and town, or city and  
county, and shall fix by law the powers, duties, and responsibilities of Justices  
of the Peace; *provided*, such powers shall not in any case trench upon the  
jurisdiction of the several Courts of record, except that said Justices shall  
have concurrent jurisdiction with the Superior Courts in cases of forcible  
entry and detainer, where the rental value does not exceed twenty-five dollars  
per month and where the whole amount of damages claimed does not exceed  
two hundred dollars.

The following is Sec 11 as amended  
on motion of Map West & Mills & Minn  
and adopted.

Sec 11 The Legislature shall determine the number of Justices  
of the Peace to be elected in <sup>Townships</sup> ~~each~~ incorporated city and town or city and  
county and shall fix by law the powers, duties, and responsibilities of Justices  
of the Peace; *provided*, such powers shall not in any case trench upon the  
jurisdiction of the several Courts of record, except that said Justices shall  
have concurrent jurisdiction with the Superior Courts in cases of forcible  
entry and detainer, where the rental value does not exceed twenty-five dollars  
per month and where the whole amount of damages claimed does not exceed  
two hundred dollars, *and in cases to enforce*

and foreclose liens on personal  
property when neither the amount  
of lien, nor the value of the  
property amounts to three hundred  
dollars.

12  
SEC. 12. The Supreme Court, the Superior Courts, and such other  
2 Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix by law the jurisdiction of any infe-  
2 rior Courts which may be established in pursuance of section one of this  
3 article, and shall fix by law the powers, duties, and responsibilities of the  
4 Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of  
2 the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other  
3 necessary officers, and shall fix by law their duties and compensation. County  
4 Clerks shall be ex officio Clerks of the Courts of record in and for their  
5 respective counties, or cities and counties. The Legislature may also provide  
6 for the appointment by the several Superior Courts of one or more Commis-  
7 sioners in their respective counties, or cities and counties, with authority to  
8 perform Chamber business of the Judges of the Superior Courts, to take  
9 depositions, and perform such other business connected with the administra-  
10 tion of justice as may be prescribed by law.

*The following is Sec 14 as amended  
on motion of Mr Belcher and  
adopted.*

(SEC. 14. The Legislature shall provide for the election of a Clerk of  
2 the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other  
3 necessary officers, and shall fix by law their duties and compensation, *which*

*Compensation shall not be increased  
or diminished during the term for which  
they shall have been elected.* County

4 Clerks shall be ex officio Clerks of the Courts of record in and for their  
5 respective counties, or cities and counties. The Legislature may also provide  
6 for the appointment by the several Superior Courts of one or more Commis-  
7 sioners in their respective counties, or cities and counties, with authority to  
8 perform Chamber business of the Judges of the Superior Courts, to take  
9 depositions, and perform such other business connected with the administra-  
10 tion of justice as may be prescribed by law.]

SEC. 15. No judicial officer, except Justices of the Peace and Court  
2 Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of  
2 such opinions of the Supreme Court as it may deem expedient, and all opin-  
3 ions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Supe-  
2 rior Courts shall severally, at stated times during their continuance in office,  
3 receive from the State treasury, for their services, a compensation which shall  
4 not be increased or diminished during the term for which they shall have been  
5 elected. During the term of the first Judges elected under this Constitution,  
6 the annual salaries of the Justices of the Supreme Court shall be six thousand  
7 dollars each. The Superior Judges shall be divided into four classes: Those  
8 of the City and County of San Francisco, and of the Counties of Alameda,  
9 San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, shall con-  
10 stitute the first class, and shall each receive an annual salary of five thousand  
11 dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador,  
12 Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer,

13 Santa Cruz, Solano, Tulare, Yolo, Kern, Yuba, and San Bernardino, shall  
14 constitute the second class, and shall receive an annual salary of four thousand  
15 dollars each, payable quarterly; those of the Counties of Calaveras, Fresno,  
16 Lake, Marin, Merced, Plumas, San Benito, San Diego, San Luis Obispo, San  
17 Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Sutter, Tehama,  
18 Tuolumne, and Ventura, shall constitute the third class, and receive an annual  
19 salary of three thousand dollars each, payable quarterly; and those of all other  
20 counties of the State, not above enumerated, shall constitute the fourth class,  
21 and receive an annual salary of two thousand dollars each, payable quarterly.

The following is Section 17 as amended on motion Wilson of 1<sup>st</sup> dist and Walker of Mendocino and adopted

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive from the State treasury, for their services, a compensation which shall not be increased or diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each.

until otherwise ~~changed~~ changed by the Legislature the Superior Court Judges shall receive an annual salary of thirty five hundred dollars each, payable quarterly, except the Judges of the City and County of San Francisco and the Counties of Alameda, San Joaquin Los Angeles Santa Clara, Sacramento and Sonoma, which shall receive four thousand five hundred dollars each.

SEC. 18. The Justices of the Supreme Court, and the Judges of the Superior Courts, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.

The following is Sec 18 as amended on motion of Mr Morse and adopted

(Sec 18- The Justices of the Supreme Court, <sup>and Judges of Superior Court</sup> shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact,

2 but may state the testimony and declare the law.

The following is Sec 19- as amended on motion of Mr Heringer and adopted

SEC. 19. Judges shall not charge juries with respect to matters of fact,

2 but may

except in Criminal prosecutions for libel state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of

2 California," and all prosecutions shall be conducted in their name and by their  
3 authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the

2 Supreme Court, who shall hold his office and be removable at their pleasure.

3 He shall receive an annual salary of twenty-five hundred dollars, payable

4 quarterly.

The following is Sec 21- as amended on motion of Mr Larkin



- SEC. 21. The Justices shall appoint a Reporter of the decisions of the
- 2 Supreme Court, who shall hold his office and be removable at their pleasure.
  - 3 He shall receive an annual salary <sup>not to exceed</sup> of twenty-five hundred dollars, payable
  - 4 quarterly.

- SEC. 22. The Judges and Justices of the Peace shall not practice law
- 2 in any Court of the State during their continuance in office.

The following is Sec 22 as amended on motion of Mr Morland and adopted  
 (Sec 22 No Judge of a Court of record shall practice law in any Court of this State during his continuance in office)

- SEC. 23. A grand jury shall be composed of twelve jurors, and a con-
- 2 currence of nine shall be necessary to the making of a presentment or the
  - 3 finding of an indictment.

The above section 23 was on motion of Mr Freeman stricken out.

- SEC. 24. No one shall be eligible to the office of Justice of the Supreme
- 2 Court unless he be at least thirty-five years of age, and shall have been admitted
  - 3 to practice before the Supreme Court of the State; and no one shall be eligible
  - 4 to the office of Judge of a Superior Court unless he be at least thirty years of
  - 5 age, and shall have been admitted to practice before the Supreme Court of the
  - 6 State.

The following is Sec 24 as amended on motion of Mr Shurtliff and adopted -

(Sec 24 - No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State

INTRODUCED BY COMMITTEE ON RIGHT OF SUFFRAGE.

NOVEMBER 13<sup>TH</sup>, 1878.

*as amended in Committee of the whole*  
~~READ, AND ORDERED TO LAY ON TABLE UNTIL THE MINORITY REPORT OF~~  
~~THE COMMITTEE IS MADE.~~

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every native male citizen of the United States, and every  
 2 naturalized citizen thereof, who shall have become such ninety days prior to  
 3 any election, of the age of twenty-one years, who shall have been a resident of  
 4 the State one year next preceding the election, and of the election district in  
 5 which he claims his vote ninety days, shall be entitled to vote at all elections  
 6 which are now or may hereafter be authorized by law; *provided*, that no idiot,  
 7 insane person, or person convicted of any infamous crime, shall be entitled to  
 8 the privileges of an elector; *provided*, that the Legislature may by law remove  
 9 in whole, or in part, the disabilities to exercise the elective franchise on  
 10 account of sex.

*The following is sec 1 - as  
 amended on motion of Messrs  
 Jinnin, Campbell, Miller,  
 Shorttiff, and McCallum.  
 and adopted*

SECTION 1. Every native male citizen of the United States,

*every*  
 male person who shall have  
 acquired the rights of citizenship

Under or by virtue of the treaty  
of Guetaro, and every male

2 naturalized citizen thereof, who shall have become such ninety days prior to  
3 any election, of the age of twenty-one years, who shall have been a resident of  
4 the State one year next preceding the election, and of the election precinct  
5 in which he claims his vote ninety days, shall be entitled to vote at all elections  
6 which are now or may hereafter be authorized by law; provided that

no native of China shall vote at any  
election, provided further, that no idiot,

7 insane person, or person convicted of any infamous crime, shall be entitled to  
8 the privileges of an elector;

provided further that no  
person hereafter convicted of embezzle-  
ment or misappropriation of public  
money while holding office  
or employed in the public  
service; shall ever exercise  
the privileges of an elector  
or hold any office whatever  
in this State.

SEC. 2. Electors shall in all cases, except treason, felony, or breach of  
2 the peace, be privileged from arrest on the days of election, during their  
3 attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform militia duty on the day  
2 of election, except in time of war or public danger.

SEC. 4. For the purpose of voting, no person shall be deemed to have  
2 gained or lost a residence by reason of his presence or absence while employed  
3 in the service of the United States, nor while engaged in the navigation of  
4 the waters of this State or of the United States, or of the high seas; nor while  
5 a student at any seminary of learning; nor while kept at any alms-house or  
6 other asylum, at public expense; nor while confined in any public prison.

SEC. 5. All elections by the people shall be by ballot.

Action of Committee

Nov. 13, 1878

Amendment No. 504

Right of Suffrage

INTRODUCED BY COMMITTEE ON RIGHT OF SUFFRAGE

NOVEMBER 13TH, 1878.

READ, AND ORDERED TO LAY ON TABLE UNTIL THE MINORITY REPORT OF

INTRODUCED BY THE COMMITTEE ON REVENUE AND TAXATION.

NOVEMBER 18TH, 1878.

*As amended in Committee of the whole*  
~~NINE HUNDRED AND SIXTY COPIES ORDERED PRINTED.~~

REVENUE AND TAXATION.

ARTICLE —.

SECTION 1. All taxes shall be uniform upon the same class of sub-  
2 jects within the territorial limits of the authority levying the tax, and shall  
3 be levied and collected under general laws.

*The following is Section 1  
as amended on motion of W.W.  
Frisman, and adopted)*

*(Sec 1- Taxation shall be equal and  
uniform throughout this State.)*

SEC. 2. All property, including franchises, capital stock of corpora-  
2 tions or joint-stock associations, and solvent debts, deducting therefrom debts  
3 due to bona fide residents of this State, and excluding growing crops, private  
4 property exempt from taxation under the laws of the United States, public  
5 property belonging to the United States, or to this State, or any municipality  
6 thereof, and all property and the proceeds thereof which is used exclusively

7 for charitable purposes, shall be taxed in proportion to its value, to be ascer-  
8 tained as directed by law.

2.) (The following is Mr Johnsons Substantive  
for Sec 2 - which was adopted)

Sec 2 = Laws shall be passed taxing  
all moneys, credits secured  
by mortgage or trust-deed  
or unsecured, investments  
in bonds, franchises, and  
all other property, real  
and personal, according  
to its <sup>true</sup> value in money, except  
as hereafter provided, but  
the Legislature may authorize  
except in the case of credits  
secured by mortgage or trust-  
deed a deduction from  
credits of debts due to  
bona fide residents of  
this State. Growing Crops, and  
such property as may be used  
exclusively for public schools,  
and such as may belong to the  
United States, this State, any



3)  
County, or municipal Corporation  
within this State, shall be exempt  
from taxation. Squire

SEC. 3. Land, and the improvements thereon, shall be separately  
2 assessed. Cultivated and uncultivated land, of the same quality and similarly  
3 situated, shall be assessed at the same value.

SEC. 4. Every tract of land containing within its boundaries more than  
2 one government section shall be assessed, for the purposes of taxation, by sections  
3 or fractional sections; and where the section lines have not been established  
4 by authority of the United States, the Assessor and County Surveyor shall  
5 establish the section lines, in conformity with the government system of sur-  
6 veys, as nearly as practicable. Each section or fractional section shall be valued  
7 and assessed separately; and for the purpose of subdividing and assessing, the  
8 Assessor and Surveyor, and their assistants, may enter upon any land within  
9 their respective counties.

(The following is Sec 4 - as  
Amended by Mr Reed and  
adopted)

(Sec 4 = Every tract of Land containing  
within its boundaries more than one  
government section shall be assessed  
and valued for the purpose of taxation,  
by sections or fractional sections, in such  
a manner as the Legislature may by  
law provide

4

SEC. 5. A mortgage, deed of trust, contract, or other obligation by  
2 which a debt is secured, shall, for the purposes of assessment and taxation, be  
3 deemed and treated as an interest in the property affected thereby. Except  
4 as to railroad and other quasi public corporations, in case of debts so secured,  
5 the value of the property affected by such mortgage, deed of trust, contract, or  
6 obligation, less the value of such security, shall be assessed and taxed to the  
7 owner of the property, and the value of such security shall be assessed and  
8 taxed to the owner thereof, in the county in which the property affected thereby  
9 is situate. The taxes so levied shall be a lien upon the property and security,  
10 respectively, and may be paid by either party to such security; if paid by the  
11 owner of the security, the tax so levied upon the property affected thereby shall  
12 become a part of the debt so secured; if the owner of the property shall pay  
13 the tax so levied on such security, it shall constitute a payment thereon, and  
14 to the extent of such payment, a full discharge thereof.

(The following is Sec 5 as  
Amended on motion of Messrs  
Winans, Freeman, & Herrington,  
and adapted.)

SEC. 5. A mortgage, deed of trust, contract, or other obligation by  
2 which a debt is secured, shall, for the purposes of assessment and taxation, be  
3 deemed and treated as an interest in the property affected thereby. Except  
4 as to railroad and other quasi public corporations, in case of debts so secured,  
5 the value of the property affected by such mortgage, deed of trust, contract, or  
6 obligation, less the value of such security, shall be assessed and taxed to the  
7 owner of the property, and the value of such security shall be assessed and  
8 taxed to the owner thereof, in the <sup>City or district</sup> county in which the property affected thereby  
9 is situate. The taxes so levied shall be a lien upon the property and security,  
10 respectively, and may be paid by either party to such security; if paid by the  
11 owner of the security, the tax so levied upon the property affected thereby shall  
12 become a part of the debt so secured; if the owner of the property shall pay  
13 the tax so levied on such security, it shall constitute a payment thereon, and  
14 to the extent of such payment, a full discharge thereof. *Provided*

5  
- that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

SEC. 6. Every contract hereafter made, by which a debtor is obligated  
2 to pay any tax or assessment on money loaned, or on any mortgage, deed of  
3 trust, or other lien, shall, as to any interest specified therein, and as to such  
4 tax or assessment, be null and void.

SEC. 7. No corporation, except for benevolent, religious, scientific, or  
2 educational purposes, shall be hereafter formed under the laws of this State  
3 unless the persons named as incorporators, shall at or before filing the articles  
4 of incorporation, pay into the State treasury one hundred dollars for the first  
5 fifty thousand dollars or less of capital stock, and a further sum of twenty  
6 dollars for every additional ten thousand dollars of such stock; and no such  
7 corporation shall hereafter increase its capital stock without first paying into  
8 the State treasury twenty dollars for every ten thousand dollars of increase.

(The above Sec was on  
motion stricken out)

6

SEC. 8. No license tax shall be imposed by this State, or any municipality thereof, upon any trade, calling, occupation, or business, except the manufacture and sale of wine, spirituous and malt liquors, shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal control. But the Legislature may by law impose any license, or other tax, on persons or corporations owning or using franchises or corporate privileges.

(The above Section (8) was on motion stricken out)

SEC. 9. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars, for school purposes, on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

(The above Section (9) was on motion stricken out)

SEC. 10. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

SEC. 11. The Legislature shall provide by law for the payment of all taxes on real property by installments.

(The following is sec 11 as amended on motion of Mr. Winans & adopted)

7  
SEC. 11. The Legislature shall <sup>have the power to</sup> provide by law for the payment of all  
2 taxes on real property by installments.

SEC. 12. The Legislature shall by law require each taxpayer in this  
2 State to make and deliver to the County Assessor, annually, a statement,  
3 under oath, setting forth specifically all the real and personal property owned  
4 by such taxpayer, or in his possession, or under his control, at twelve o'clock  
5 meridian, on the first Monday of March.

SEC. 13. Assessors and Collectors of State, county, city and county,  
2 town, or district taxes, shall be elected by the qualified electors of the county,  
3 city and county, town, or district in which the property taxed for State, county,  
4 city and county, town, or district purposes, is situated; *provided*, that vacan-  
5 cies may be filled by appointment, according to general laws.

*(The above Sec (13) was on motion  
Stricken out)*

SEC. 14. The State tax on property, exclusive of such tax as may be  
2 necessary to pay the existing State debt, shall not exceed forty cents on each  
3 one hundred dollars for any one year.

*(The above Sec (14) was on motion  
Stricken out)*

SEC. 15. A State Board of Equalization, consisting of two members  
2 from each Congressional District in this State, shall be elected by the qualified  
3 electors of their respective districts, at the general election to be held in the  
4 year one thousand eight hundred and seventy-nine, and every four years  
5 thereafter, whose duty it shall be to equalize the valuation of the taxable  
6 property in the State for purposes of State taxation. The Boards of Super-  
7 visors of the several counties in the State shall constitute Boards of Equali-  
8 zation for their respective counties, whose duty it shall be to equalize the  
9 valuation of the taxable property in the county for the purpose of  
10 taxation.

8

The following is Sec 15 as amended on motion of Messrs Edgerton Blackman, Nygatt, Howard, Miller & Hale. And adopted)

SEC. 15. A State Board of Equalization, consisting of two members  
2 from each Congressional District in this State; shall be elected by the qualified  
3 electors of their respective districts; at the general election to be held in the  
4 year one thousand eight hundred and seventy-nine, and every four years  
5 thereafter, whose duty it shall be to equalize the valuation of the taxable  
6 property in the State for purposes of State taxation.

*of the several Counties*  
Provided, that the Legislature shall have power to reduce the number to one from each Congressional District, when said Districts shall have been increased in number. The Controller of State shall be ex-officio - a member of said Board.

The Boards of Super-

7 visors of the several counties in the State shall constitute Boards of Equali-  
8 zation for their respective counties, whose duty it shall be to equalize the  
9 valuation of the taxable property in the county for the purpose of county  
10 taxation. Provided, said State and

County Boards of Equalization are hereby authorized and emp-  
-owered under such rules of notice as the County Boards may prescribe

9

as to the County assessments, and, under such rules of notice as the State Board may prescribe, <sup>as to the</sup> action of the State Board, to increase or lower the entire assessment roll or any assessment contained therein, so as to Equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money, of the property contained in said roll. The members of said Board except the Controller of State, shall at their first meeting after their election, so arrange by lot, that one of their number from each Congressional District shall go out of office at the end of two years, and



10)  
their successors shall be elected  
at the next general election there-  
after to be holden by the qualified  
electors of each of said districts.

SEC. 16. The State Board of Equalization shall assess the value of  
2 all the property of all railroad corporations in this State. For the purpose of  
3 taxation, the value of all lands, workshops, depots, and other buildings belong-  
4 ing to or under the control of each railroad corporation, shall be apportioned  
5 by said Board to the counties, cities and counties, cities, townships, and dis-  
6 tricts in which such lands, workshops, depots, and other buildings are situate;  
7 and the aggregate value of all other property of such railroad corporation  
8 shall be apportioned by said Board to each county, city and county, city,  
9 town, or district in which its road shall be located, according to the ratio  
10 which the number of miles of such road completed in such county, city and  
11 county, city, town, or district shall bear to the whole length of such railroad.

(The following is a proposed substitute  
for Sec 16 - which was adopted)

(Sec 16 - The franchise, roadway,  
road bed, rails and rolling  
stock of all Railroads, in this  
State, operated in more than one  
County, shall be assessed by  
the State Board of Equalization  
at their actual value, and

11).

the same shall be apportioned to the Counties, Cities and Counties, Cities, Township, and districts in which such Railroads are located in proportion to the number of miles of rail road laid in such Counties; And all other property of Railroads shall be assessed by the Counties in which such property is situated.

SEC. 17. The value of the capital stock of a corporation shall be  
2 assessed in the county in which its principal place of business is located; and  
3 separately from all other property belonging thereto; and such stock shall be  
4 assessed at its market value when the assessment is made. The real and  
5 other personal property of such corporation shall be assessed in the several  
6 counties respectively in which the same is situate. The value of such stock,  
7 over and above the aggregate value of such real and other personal property,  
8 according to such assessment, shall be taxed in the county in which the prin-  
9 cipal place of business of such corporation is located; and the value of such  
10 real and other personal property shall be taxed in the several counties respect-  
11 ively in which the same is situate. The shares of stock belonging to the stock-  
12 holders in such corporation shall be exempt from taxation; *provided*, that the  
13 provisions of this section shall not apply to railroad corporations.

(The above Section was on Motion of  
Mr McCoy - Stricken out)

12  
SEC. 18. The Legislature shall pass all laws necessary to carry out the

2 provisions of this article.

o

(The following Sec - on motion of Mr Dudley of Solano was added.)

Sec - Income taxes may be assessed to, and collected from persons, Corporations, joint stock associations or Companies resident, or doing business in this State, or any one or more of them, in such cases and amounts and in such manner as shall be prescribed by law.

Amendment.

No. 514.

INTRODUCED BY THE COMMITTEE ON WATER AND WATER RIGHTS

NOVEMBER 22<sup>D</sup>, 1878.

*As amended by Committee of the whole*  
~~READ AND ORDERED TO LIE ON TABLE UNTIL THE REPORT OF THE MINOR~~  
~~ITY IS SUBMITTED.~~

WATER AND WATER RIGHTS.

SECTION 1. All water appropriated, or that may hereafter be appropriated, for sale or rental, is hereby declared public and subject to the control of the State.

*The following is Sec 1- as amended on motion of Mr Hale, and adopted*

*(Sec 1- The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State in the manner to be prescribed by law.)*

SEC. 2. The unappropriated waters of the lakes and rivers of this State are declared to be public property, and may be appropriated by individuals, associations, or corporations, subject to such conditions and restrictions as the Legislature may impose.

The above Section<sup>(2)</sup> on motion of Mr Van Dyke was Stricken Out

SEC. 3. The Legislature shall enact laws permitting the appropriators of water and the owners or occupants of land to construct levees, ditches, canals, flumes, and aqueducts, or run their water through natural channels, for agricultural, mining, manufacturing, milling, domestic, drainage, reclamation, or sanitary purposes, across the land of others.

The above Section<sup>(3)</sup> was, on motion of Mr Cable, Stricken out.

The following Section on motion of Mr Herrington was added

(Sec - The right to collect rates or compensation for the use of water supplied to any County, City & County, City or town, or the inhabitants thereof,

3

is a franchise, and cannot  
be exercised except by authority  
of and in the manner prescribed  
by law,

10. GREGGARIO TEST

Action of Committee

Nov. 22, 1878

Amendment No. 514

Water + Water Rights

RECEIVED  
NOV 22 1878  
U. S. DEPT. OF AGRICULTURE



**Amendment.**

**No. 515.**

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MAJORITY REPORT OF COMMITTEE ON STATE INSTITUTIONS AND  
PUBLIC BUILDINGS.

NOVEMBER 23D, 1878.

~~TAKEN FROM THE TABLE, PRINTED, AND REFERRED TO~~ COMMITTEE OF THE  
WHOLE.

*As Amended in Committee of the Whole*

ARTICLE —.

SECTION 1. There shall be a State Board of Prison Directors, to con-  
2 sist of five persons, to be appointed by the Governor, with the advice and  
3 consent of the Senate, who shall hold office for ten years, except that the first  
4 appointed shall, in such manner as the Legislature may direct, be so classified  
5 that the term of one person so appointed shall expire at the end of each two  
6 years during the first ten years, and vacancies occurring shall be filled in like  
7 manner. The appointee to a vacancy, occurring before the expiration of a  
8 term, shall hold only for the unexpired term of his predecessor. The Gover-  
9 nor shall have the power to remove either of the directors for misconduct,  
10 incompetency, or neglect of duty, after an opportunity to be heard upon written  
11 charges.

SEC. 2. The Board of Directors shall have the charge and superin-  
2 tendence of the State Prisons, and shall possess such powers, and perform

- 3 such duties, in respect to other penal and reformatory institutions of the State,  
4 as the Legislature may prescribe.

SEC. 3. The Board shall appoint the Warden and Clerk, and deter-  
2 mine the other necessary officers of the Prisons. The Board shall have power  
3 to remove the Wardens and Clerks for misconduct, incompetency, or neglect  
4 of duty; all other officers and employes of the Prisons shall be appointed by  
5 the Warden thereof, and be removed at his pleasure.

SEC. 4. The members of the Board shall receive no compensation other  
2 than reasonable traveling and other expenses incurred while engaged in the  
3 performance of official duties, to be audited as the Legislature may direct.

SEC. 5. The Legislature shall pass such laws as may be necessary to  
2 further define and regulate the powers and duties of the Board, Wardens, and  
3 Clerks, and to carry into effect the provisions of this Article.

*New Section introduced by Mr. Mallin  
and adopted*

*Sec 6 After the first day of January  
1882, the labour of convicts shall not  
be let out by contract to any person,  
partnership, company or corporation  
and the Legislature shall by law  
provide for the working of convicts  
for the benefit of the state.*